

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBP No. 65 of 2021

Er. Manoranjan Kar

....

Petitioner

Mr. P.C. Panda, Advocate

-versus-

***M/s. Orissa State Disaster Mitigation
Authority @ Odisha State Disaster
Management Authority, Bhubaneswar
and others***

.... ***Opposite Parties***

Mr. P.K. Rath, Advocate

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
21.10.2022**

08. 1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act) has been filed seeking the appointment of an arbitrator to adjudicate the disputes between the parties arising out of the contract agreement dated 18th November, 2002 between the Petitioner and the Opposite Party (Odisha State Disaster Mitigation Authority also known as the Odisha State Disaster Management Authority (OSDMA) for construction of a Cyclone Shelter at Singarpal, Kakatpur Block in Puri District.
2. It is not in dispute that there is an arbitration clause in the said agreement. In terms of the preliminary counter affidavit filed by OSDMA, the contract commenced on 25th November, 2002 and was actually completed on 30th September, 2004 and was handed over by the Contractor to the Cyclone Shelter Maintenance Managing Committee on 8th February, 2005.

3. It appears that an interim deviation was approved for Rs. 65,81,291/- out of which Rs.56,23,171/- (up to the 6th RA bill) was paid to the contractor.

4. The question then arose as regards the payment of final bill of the contractor.

5. The case of the Petitioner is that he kept waiting for clearance of the final bill and had to seek information under the Right to Information Act, 2005 (RTI Act). From the office of the Executive Engineer, a communication was received under the RTI Act on 25th March, 2021 informing that “final bill has not been paid due to wanting of sanction final deviation and EOT.” It was further noted that “the completion certificate and handing over documents are not available and any complaint regarding unsafe of the building is raised from any users of the building.”

6. The order sheet of the Appellate Authority under the RTI Act noted that “as per order of First Appellate Authority, the contract of the project “Cyclone Shelter at Singarpal under Package No.W.C.S.-PURI-2, OSDMA will be closed by issuing completion certificate and initiation will be taken for submission of final bill to OSDMA for sanction by 30th April, 2021 for disposal of the case by Junior Engineer, Konark Section.”

7. It appears that thereafter completion certificate was in fact issued by the R & B Division, Puri on 5th July, 2021 enclosing the copy of the final bill.

8. Counsel for the Petitioner also placed reliance on a communication 1st June, 2021 addressed by the Managing Director of OSDMA to the Commissioner-cum-Secretary, Works Department, Government of Odisha pointing out that the EE had failed to submit the final bill despite OSDMA's request and that "till date it is pending". There is specific line in the letter in which reads "the Works Department may make necessary arrangement for payment of the above pending dues and closure of the contract of the above work."

9. It is on the above basis that the Petitioner issued a notice on 30th March, 2021 asking for the clearance of the long pending dues followed by another letter dated 26th April, 2021 seeking the appointment of an Arbitrator.

10. On the above basis, it is contended by Mr. P.C. Panda, learned counsel for the Petitioner that this is not a time barred claim and that the cause of action continued till such time the completion certificate issued and the final bill forwarded on 5th July, 2021.

11. Mr. P.K. Rath, learned counsel appearing for the OSDMA sought to contend that this was on the face of it, it was a time barred claim since the contractor has failed to raise a completion certificate in terms of clause 55 of the agreement soon after completion of the work and handing over the project way back in 2004. Relying on the decisions in *Vishram Varu v. Union of India* 2002 SCC Online SC 487; *BSLN v. Nortel Networks Ltd.* (2021) 5 SCC 738; *Vidya Drolia v. Durga Trading Corporation* (2021) 2 SCC 1 and *Kamalakanta Engineering & Construction Ltd. v.*

National Projects Construction Corp. Ltd. AIR 2022 Ori 45. He submitted that on the face of it since it was a time barred claim this Court would be justified in declining the prayer of the Petitioner.

12. The above submissions have been considered.

13. To begin with, it has to be noted that in the present case the procedure under the agreement in question envisaged the Executive Engineer having to clear the final bill and then forward the final bill the OSDMA for payment. From the information obtained by the Petitioner through the RTI Act, it appears that this exercise was in fact not completed till July 2021. This is not a case where it can straightway be concluded that the claim is totally time barred on the face of it. It appears that the Petitioner does have an arguable case as regards limitation. Nevertheless, the Court is of the view that the contentions of both parties on the issue of limitation should be left open to be decided by the Arbitrator in accordance with law. Therefore, the Court does not express any final view on the issue of limitation and the learned Arbitrator will decide the said issue independent of any observations thereon in this order.

14. With this clarification the Court appoints **Shri Santosh Kumar Pattnaik**, Senior Advocate of this Court to act as the sole Arbitrator to adjudicate the disputes between the parties including their claims and counter claims. The arbitration proceedings shall take place under the aegis of the High Court of Orissa Arbitration Centre.

15. The arbitration petition is disposed of accordingly. A copy of this order be communicated to the Coordinator, High Court Arbitration Center and the learned Arbitrator forthwith.

16. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

S.K. Jena/Secy.

